

SETTLEMENT OF STATE ADMINISTRATIVE DISPUTES

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Abstract

Indonesia is a country of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In line with these provisions, it provides an understanding that all government actions must be based on law. The law here is a guideline and limiter for the implementation of authority carried out by the government. This is intended so that the government is not arbitrary in its actions. The government's authority is focused on implementing executive power at both the central and regional levels. As this has been shared in Baron de Montesquie's theory of the Separation of Powers, which requires that executive power is government power.

This research uses a normative method with a statutory approach (statue approach) and a conceptual approach (conceptual statue), the source of legal materials is obtained from primary legal materials, secondary legal materials, tertiary legal materials, the technique of collecting legal materials in this research is carried out through a card system. (card system). The analysis technique used in this research is descriptive analytic analysis technique. Apart from that, we also use evaluation techniques, which are carried out by providing an assessment to find out whether a view, proposition, norm formulation statement, and decision stated in legal materials are correct or not, and the last is the argumentation technique. This argumentation technique cannot be separated from the evaluation technique. Because the assessment must be based on reasons that are in accordance with legal logic.

Keywords: *Community, Losses, State Administrative Decisions*

Abstrak

Indonesia adalah negara hukum sebagaimana diatur dalam Pasal 1 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Sejalan dengan ketentuan tersebut memberikan pemahaman bahwa segala tindakan pemerintah harus berdasarkan hukum. Undang-undang disini merupakan pedoman dan pembatas bagi pelaksanaan kewenangan yang dilaksanakan oleh pemerintah. Hal ini dimaksudkan agar pemerintah tidak sembarangan dalam bertindak. Kewenangan pemerintah terfokus pada pelaksanaan kekuasaan eksekutif baik di tingkat pusat maupun daerah. Seperti yang dianut dalam teori Separation of Powers karya Baron de Montesquie yang mensyaratkan bahwa kekuasaan eksekutif adalah kekuasaan pemerintah.

Penelitian ini menggunakan metode normatif dengan pendekatan undang-undang (statue pendekatan) dan pendekatan konseptual (conceptual patung), sumber bahan hukum diperoleh dari bahan hukum primer, bahan hukum sekunder, bahan hukum tersier, teknik pengumpulan bahan hukum di penelitian ini dilakukan melalui sistem kartu. (sistem kartu). Teknik analisis yang digunakan dalam penelitian ini adalah teknik analisis deskriptif analitik. Selain itu juga menggunakan teknik evaluasi, yaitu dengan cara memberikan penilaian untuk mengetahui benar atau tidaknya suatu pandangan, dalil, pernyataan rumusan norma, dan keputusan yang tercantum dalam bahan hukum, dan yang terakhir adalah teknik argumentasi. Teknik argumentasi ini tidak lepas dari teknik evaluasi. Sebab penilaiannya harus berdasarkan alasan yang sesuai dengan logika hukum

Kata Kunci: Masyarakat, Kerugian, Keputusan Tata Usaha Negara

INTRODUCTION

Indonesia is a country of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In line with these provisions, it provides an understanding that all government actions must be based on law. The law here is a guideline and limiter for the implementation of authority carried out by the government. This is intended so that the government is not arbitrary in its actions. The government's authority is focused on the implementation of executive power both at the central and regional levels. As this has been shared in Baron de Montesquie's theory of the Separation of Powers, which requires that executive power is government power.

Theoretically, the government has two positions, namely as a state organ and as state administration. As a state organ, the government acts for and on behalf of the state. Meanwhile, as state administration, the government can act both in the regulatory field (*regelen*) and in the service field (*bestuuren*). The government as state administration is an agency or position in the field of executive power that has independent power based on law to carry out government actions both in the field of regulation and administration of state administration.

Government actions that are required to be based on this law are carried out to prevent arbitrary actions by government officials, or attempts to abuse authority that have the potential to violate people's human rights (HAM). Because the actions of the government or state administration can basically be categorized into three types:

- a. Issuing statutory regulations (*regelling*);
- b. Issuing decisions (*beschikking*);
- c. Performing material actions (*materielle daad*).

In carrying out these actions, the government often carries out deviant and unlawful actions, which can cause various losses to citizens.

The government's actions in issuing these laws and regulations are carried out based on its authority. These statutory regulations are produced by the government, whether included in the hierarchy of statutory regulations or not, including Government Regulations, Presidential Regulations and Governor Regulations, Regent/Mayor Regulations, Ministerial Regulations, and other Official Regulations, while the government's actions in issuing Decrees, this is carried out by State administrative officials in issuing written determinations that are individual, final and concrete. Furthermore, the meaning of normative state administrative decisions is regulated in Law No. 5 of 1986 in conjunction with Law No. 9 of 2004 concerning PTUN, which in Article 1 paragraph 3, determines:

"A State Administrative Decision is a written decision issued by a State Administrative Agency or Official which is based on applicable laws and regulations, which is concrete, individual and final, giving rise to legal consequences for a person or civil legal entity."

In Indonesian practice, Governor Decrees, Regent/Mayor Decrees are the same as Governor Regulations, Regent/Mayor Regulations, so that the difference between Regulations/Decisions and Determinations or *Beschicking* or State Administrative Decrees lies in the use of Decree Letters (SK). This article focuses on the issue of government action in issuing State Administration/*Beschicking* Regulations and Decrees.

Authority and position in the field of state administrative law cannot be separated, because the authority to carry out an action must be accompanied by a public position attached to a person/legal entity. Just as the central or regional government, as an executive in its position as ruler, can carry out concrete actions, carry out regulations, or issue decisions, including making policy regulations. Therefore, in order to produce policy regulations or State Administrative Decisions that are good and feel justice, one effective means of monitoring the use of government authority in issuing decisions is to use the principles of administrative law, which in this case are the General Principles of Government that Good.

The existence of these principles in monitoring government actions provides a real essence that in every legal state, prioritizing the principle of "*equality before the law*" or *equality before the law and the protection of human rights*. So that both the government and society

respect the law as the supreme commander. If we examine in more depth one of the provisions of the 1945 NRI Constitution which states that "the Indonesian state is a state of law", which will prioritize the protection of human rights, and want to create a sense of justice in every government action, then the assessment of the policy regulations produced by the executive cannot only relies on statutory regulations, but also relies on unwritten law, namely the General Principles of Good Government (AAUPB).

In fact, there are still many cases related to decisions of regional heads that are being challenged, such as what happened in Medan on 28 May 2012,¹ namely:

"A total of 6 Regional Heads in North Sumatra Province were sued at the Medan State Administrative Court by the Islamic Advocacy Institute, Indonesian Ulema Council of North Sumatra Province (Ladui MUI Sumut). Lawsuit Number: 04/Adv-MUI SU/XII/2011 dated December 15 2011 regarding the request for cancellation of the permit and closure of the Indomaret retail business presented to the defendants.'

Apart from the case that occurred in Medan, there are still several decisions that are being challenged at the State Administrative Court, such as what happened in Surabaya, where the problems are described as follows:

"The East Java Governor's Decree (SK) which won the Kediri Regency Government in the dispute over the status of Mount Kelud with Blitar Regency, has long demands. This is related to the second trial which was held on Tuesday (PTUN) Surabaya with case number 51/G/2012/PTUN.SBY The decree being sued is East Java Governor Soekarwo's Decree Number 188/113/KPTS/013/2012 dated 28 February 2012 concerning the Settlement of Regional Boundary Disputes between Blitar Regency and Kediri Regency which is located in the Mount Kelud area in East Java Province².

Another case occurred in Jombang, namely that the Regent of Jombang was sued by the PTUN, as reported by Beritajatim.com, which is described as follows:

"Jombang (beritajatim.com)-The Regent of Jombang, Suyanto, was sued by the PTUN (State Administrative Court) by the FRMJ (Jombang Community Consultation Forum). The reason was that the regent for the two terms had made a mistake by deactivating the Head of Plosogenuk Village, Perak District, Pujiantono. Pujiantono himself was caught in a corruption case involving compensation for the construction of the Mojokerto - Kertosono toll road. He was sentenced to 1 year in prison by a local court, in April 2011. However, Puji filed an appeal without receiving an answer. Ironic! At the same time, he actually received a letter of temporary dismissal from Jombang Regent number 188.4.45/102/415.10.10/2012.³"

The 3 cases above show that there is an institution that has the authority to cancel disputes resulting from government decisions, this institution is the State Administrative Court. Philosophically, this institution was formed to prevent arbitrariness from the government in carrying out its actions through decisions issued. Therefore, in order to guarantee the protection of people's human rights, this institution exists.

Regardless of the existence of the State Administrative Court (PTUN), the 2 cases above show that quite a few government decisions have the potential to violate the law, which can result in the protection of people's human rights being neglected. Therefore, it is not appropriate for the government to only be guided by written rules contained in statutory regulations, but rather it is necessary to use the General Principles of Good Government (AAUPB) as a guide in issuing decisions.

Basically, one of the main tasks of state administrative bodies or officials in a legal state is to carry out public services. However, in carrying out duties, it is often found that legal instruments are incomplete in providing legal rules. Therefore, state administrative bodies or officials are provided with a way to resolve these problems by issuing decisions. Every decision that will be issued by a state administrative agency or official in the context of administering government is in line with the increasing demands for public services that must meet the increasingly complex life of society.

¹ '16 Kepala Daerah Di Sumut Digugat Soal Indomaret', *Www.Beritasumut.Com*, 2012.

² 'Pemprov Mau Batalkan SK Gubernur Soal Kelud!', *Www.Beritajatim.Com*, 2012.

³ 'Bupati Jombang Digugat Ke PTUN', *Www.Beritajatim.Com*, 2012.

In order to follow up on violations committed by the government, it is necessary to monitor the government and provide legal accountability for the government. The need for supervision is intended to ensure that the government carries out its duties and authority in accordance with regulations. The importance of supervision also aims to prevent tendencies towards absolute or authoritarian forms of government that ignore the sovereignty of the people which is constitutionally guaranteed. In its concept, there are two meanings of government, namely government in the broad sense and government in the narrow sense. Government in a broad sense (regering) is the implementation of the duties of all agencies, institutions and officers who are entrusted with the authority to achieve state goals a. Meanwhile, government in the narrow sense (bestuur) includes the organization of functions that carry out government tasks⁴.

The implementation of good governance basically makes people feel:

- a. The community's human rights (HAM) are protected and fulfilled.
- b. The realization of the principle of equality before the law "equality before the law" which emphasizes issues of justice/non-discrimination in serving society.
- c. There is peace and order because the government carries out its duties well and in accordance with the rules.
- d. There is a clean government climate that is free from corruption and corruption.

In order to guarantee and provide a legal basis that government actions (bestuurshandeling) carried out by the government are legitimate (legitimate and justified), accountable and responsible, then every government action must be based on laws that are fair, dignified and democratic and based on principles that guide the implementation of government actions. State Administrative Officials in using their authority, such as issuing decisions, in their implementation have the potential to conflict with the law. For this reason, one effective means of controlling the use of this authority is to use AAUPB.

Theoretically, the state is the highest organization among one group or several groups of people who have the aspiration to live unitedly in a certain area, and have a sovereign government. Therefore, the State has the authority to regulate society in using its powers. As is known, the elements of a country are the people, territory, government and foreign control.

Then regarding state duties they are divided into three groups⁶. First, the state must provide protection to occupiers in certain territories. Second, the State supports or directly provides various services for community life in the social, economic and cultural fields. Third, the State becomes an impartial referee between conflicting parties in society and provides a judicial system that guarantees basic justice in social relations.

The task of the state according to current modern understanding {in a Welfare State or Social Service State}, is to carry out public interests to provide maximum prosperity and prosperity based on justice in a State of Law⁷. Based on this description, the researcher will examine the problem of "*How are State Administration Decisions that cause harm to a person/society?*" Here the goal to be achieved is to find out the resolution of government administrative decisions that cause harm to a person/society.

RESEARCH METHODE

This empirical research uses a statutory approach (statute approach) and a case approach (case approach). As for this study, researchers used the live case study approach as an approach to a legal event whose process is still ongoing. Thus, the authors make observations or research directly into the field in order to obtain accurate truth in the process of perfecting this writing.

The data collection technique that researchers used in this study was through library research and field studies, namely conducting interviews. The data collection study was

⁴ Kuntjoro Purbopranoto, *Perkembangan Hukum Administrasi Indonesia* (Bandung: Bina Cipta, 1981).

⁵ Moh Mahfud MD, *Dasar Dan Struktur Ketatanegaraan Indonesia (Edisi Revisi)No Title* (Jakarta: Rineka Cipta, 2000).

⁶ Y.Sri Pudyatmoko, *Perizinan, Problem Dan Upaya Pembinaan* (Jakarta: Gramedia Widiasana Indonesia, 2009).

⁷ Amrah Muslimin, *Beberapa Asas Dan Pengertian Pokok Tentang Administrasi Dan Hukum Administrasi* (Bandung: Alumni, 1985).

classified into two parts, namely primary data and secondary data, primary data obtained through field studies and secondary data sourced from library research.

The results of the field study inventory were analyzed to obtain conclusions and then analyzed using integrative and conceptual analysis methods which tend to be directed at finding, identifying, processing and analyzing legal materials to understand their meaning, significance and relevance. From the data obtained, it will be arranged systematically after being selected based on the problem and seen for its suitability with the applicable provisions then discussed theoretically combined with the reality in the field to produce conclusions.

DISCUSSION

1. Authority Theory

In Indroharto's opinion, authority in the juridical sense is an ability granted by applicable laws and regulations to give rise to legal consequences⁹. Next H.D. Stout said that: "*authority is an understanding that comes from the law of government organizations, which can be explained as the entirety of the rules relating to the acquisition and use of government authority by public subjects in political legal relations*,"¹⁰ Indroharto and Stout's opinions above agree that authority comes from the governing laws and regulations. In another opinion, Emil J. Sady stated that authority consists of at least 3 (three) components, namely influence, legal basis and legal conformity¹¹.

Regarding the terms authority and authority, according to Philipis M Hadjon, "The terms authority or authority are equated with *bevoegheid*, but have different characters. *Bevoegheid* is used in public law." In the general Indonesian dictionary there is no distinction between the meanings of authority and authority, both of which contain the meaning of rights and power¹².

In the definition of authority above, Inroharto and Stouck agree that authority comes from statutory regulations. Furthermore, regarding sources of authority, according to H.D Van Wijk and Willem Konijnenbelt¹³, ways to obtain government authority are classified into 3 ways through:

- a. *Atributie: toekenning van een bestuursbevoegheid dooe een wetgever ann een bestuursorgan*, or attribution is the granting of governmental authority by legislators to government organs.
- b. *Delagatie: overdracht van een bevoegheid van het een bestuursogan aan een ander*, or delegation is the delegation of government authority from one government organ to another government organ.
- c. *Mandate: een bestuursorgaan laat zijn bevoegdheid names hues uitoefenen door een ander*, meaning a mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf.
- d. Then F.A.M. Stroink and J.G. Steenbek argue that the way to obtain authority is essentially through attribution and delegation, as can be seen from their opinion:

There are only two ways for organs to obtain authority, namely attribution and delegation. Attribution concerns the transfer of new authority, while delegation concerns the delegation of existing authority (by an organ that has obtained attributive authority) to another organ; so delegation is logically always preceded by attribution. The mandate does not result in any change in authority, because there are only internal relations, such as ministers and employees making certain decisions on behalf of the minister, while judicially authority and

⁸ Petter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2015).

⁹ Indroharto, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara* (Jakarta: Pustaka Sinar Harapan, 1991).

¹⁰ Ridwan HR, *Administrasi Negara Hukum* (Jakarta: Raja Grafindo Persada, 2010).

¹¹ Emil J. Sady, 'Improvement Local Government for Development Purpose', *Journal Of Local Administration Overseas*, 1962, 135.

¹² W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 1986).

¹³ HR.

responsibility remain with the ministry's organs. Employees decide technically, while ministers decide juridically¹⁴.

Meanwhile, Philipus M. Hadjon stated that there are 2 sources for obtaining authority, namely attribution and delegation. However, it is also said that sometimes mandates are used as a separate way of obtaining authority¹⁵.

From the three opinions above regarding the source of authority, it essentially states that the main source of authority is attribution and delegation. Meanwhile, mandates relate to technical issues, especially by superiors towards subordinates. In other technical matters, Suwoto Mulyosudarmo prefers to use the term "power", according to him, there are two types of giving power, namely the acquisition of attributive power and the acquisition of derivative power. Derivative acquisition of power is differentiated into delegation and mandate¹⁶.

2. The concept of the rule of law

Before entering into the concept of the rule of law, it is necessary to first put forward the concept of "State" in order to complete the conceptual definition of the State, namely¹⁷:

- a. The state (polis) according to Aristotle is an association of families and villages in order to obtain the best possible life.
- b. Meanwhile, the definition of the State according to Jean Bodin is an association of families with all their interests which is led by the mind of a sovereign power.
- c. Hugo Grotius, The state is a perfect association of free people to obtain legal protection."
- d. Bluntschi, the State is the people organized into a political organization in a certain area.
- e. Hans Kelsen, The state is an arrangement of social coexistence with coercive order.
- f. Woodrow Wilson, The state is a people organized for law in a certain area
- g. Diponolo, the State is an organization of sovereign power which, through governance, implements rules or regulations for a people in a certain area.

Regardless of its shape and style, the state is always an organization of power. This power organization always has governance. And this governance always implements rules and regulations for a people in a particular area.

Basically, the opinion above assumes that the State is an organization that has supreme power in an area to control society so as to create public order and peace.

After prioritizing the concept of the State, it is time to examine the issue of the concept of the Rule of Law. Constitutionally, Indonesia is a state based on law, a Swedish legal expert named J.F Stahl, determined that the state of law (*rechstaat*) in the Continental European system is characterized by¹⁸:

- a. Government actions based on law (legality)
- b. Protection of human rights,
- c. Separation of powers,
- d. The existence of administrative justice

Meanwhile, the rule of law according to A.V Dicey, which is known in the concept of "rule of law" in the Anglo Saxon system, is characterized by¹⁹:

- a. Rule of Law
- b. Equality Before the Law
- c. Protection of human rights

¹⁴ HR.

¹⁵ Philipus M Hadjon, Sri Soemantri Martosoewignyo, and Sjachran Basah, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2008).

¹⁶ Suwoto Mulyosudarmo, *Peralihan Kekuasaan, Kajian Teoritis Dan Yuridis Terhadap Pidato Nawaskara* (Jakarta: Gramedia Pustaka Utama, 1997).

¹⁷ Dkk Ma Boli Sabon, *Ilmu Negara Buku Panduan Mahasiswa* (Jakarta: Gramedia Pustaka Utama, 1992).

¹⁸ Moh. Mahfud MD, *Demokrasi Dan Konstitusi Di Indonesia* (Yogyakarta: Liberty, 1993).

¹⁹ Moh. Mahfud MD.

The two opinions above both agree that the consequences of the rule of law of government actions must be based on law, and include human rights (HAM). The difference between the two opinions above is the existence of the Administrative Court or State Administrative Court. Apart from that, there are other scholars who also study the principles of the rule of law, namely J.B.M. ten Berge, who stated:²⁰

a. Principle of Legality

Restrictions on the freedom of citizens (by leaders) must be determined in law which is a general regulation. Laws in general must provide guarantees (to citizens) from arbitrary (government) actions, collusion and various types of improper actions. The exercise of authority by government organs must be determined based on written law (formal law);

b. Protection of human rights;

c. The government is bound by the law;

d. monopoly of government coercion to ensure law enforcement;

e. supervision by an independent judge.

Basically, Ten Berge also recognizes that the elements of the rule of law are the principles of legality and protection of human rights. However, this scholar also added other elements of the rule of law, namely the government's power in enforcing the law and the administration of an independent judiciary.

Furthermore, M.C Burkens in his scientific oration Yohanes Usfunan explained the characteristics or characteristics of a rule of law state, namely, a state can be said to be a state of law (*Rechtsstaat*) if it fulfills the following requirements²¹: the principle of legality, division of powers, human rights (HAM) and supervision. Court (administrative justice). In terms of the characteristics of the rule of law presented by M.C Burkens, it turns out to be identical to that presented by F.J Stahl in the concept of "*rechstaat*" in the Continental European system.

3. Awareness Process

There are 2 characteristics of statutory regulations, namely Legislation and Regulation. Legislation is a legal product (legislation) produced by the Executive and Legislative institutions. Meanwhile, regulations are legal products produced by an institution, whether from executive, legislative or judicial power. From this it is known that Legislative Regulations are written regulations formed by state institutions or authorized officials and are generally binding. The elements of statutory regulations can be identified, namely:

a. Written regulations

b. Formed by a State institution or authorized official

c. Tying in general

It is factually known that, apart from legislation and regulations, there are also decisions/decrees/benefits. "Decision" if you look at Law of the Republic of Indonesia no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning State Administrative Courts, determines: A State Administrative Decision is a written decision issued by a State Administrative Body or Official which contains State Administrative legal actions based on applicable statutory regulations, which are concrete, individual, and final, which give rise to legal consequences for a person or civil legal entity;

From the formulation of this Article, it turns out that State Administrative Decisions which are the basis for the emergence of State Administrative disputes have the following characteristics:

a. Written determination;

b. Issued by a State Administrative Body/Official;

c. Contains State Administration legal acts;

²⁰ HR.

²¹ Yohanes Usfunan, 'Perancangan Peraturan Perundang-Undangan Yang Baik Menciptakan Pemerintahan Yang Bersih Dan Demokratis', 2004.

- d. Based on applicable laws and regulations;
- e. Concrete, individual and final;
- f. Give rise to legal consequences for a person or civil legal entity.

These 6 (six) elements are cumulative, meaning that in order to be called a State Administrative Decision that can be disputed in the State Administrative Court, all of these elements must be fulfilled. In the Netherlands, the term *beschikking* was first used by Van der Pot and Vaan Voilenhoven. Several scholars have provided definitions of *Beschikking*, including²²:

- a. Mr. Drs. E. Utrecht in his book *Introduction to Indonesian State Administrative Law*, states that *Beschikking* (decree) is a one-sided public legal act carried out by government instruments based on a special power.
- b. Mr WF. Prins in his book *Inleiding in het administrativerecht van Indonesia*, mentions *beschikking* as a unilateral legal action in the field of government carried out by government organs based on the authority of that organ.
- c. Van der Pot, in his book *Nederlandsch Bestuursrecht* states that *beschikking* is a legal act carried out by government agencies, statements of the will of government agencies in administering privileges, with the intention of bringing about changes in the field of legal relations.

From these several definitions, it can be explained that a *beschikking*, namely, first, is a one-sided public legal act or a unilateral act by the government and is not the result of an agreement between two parties. Second, the nature of public law is derived from special authority or power. Third, with the aim of changes in the field of legal relations. According to Van der Pot, State Administrative Decisions (KTUN) must fulfill four conditions for the decision to be valid as a *rechtmatigheid* decision, including:

- a. Decisions must be made by the organs that have the power to make them;
- b. Because a decision is a statement of will (*wilsverklaring*), the formation of that will must not contain any juridical shortcomings (*geen juridische gebreken in de wilsvorming*);
- c. Decisions must be given a form (*yorri*) determined by the regulations on which they are based and their making must also pay attention to the method/procedure for making the decision, if the method is expressly stipulated in the basic regulations;
- d. The content and objectives of the decision must be in accordance with the content and objectives of the basic regulations²³.

Of the four conditions put forward by Van der Pot, on the other hand, Van der Wei divides these conditions into two groups, namely²⁴:

A. Material Requirements

- a. The State apparatus that makes decisions must have power;
- b. In the will of the State apparatus that makes decisions there must be no shortcomings;
- c. Decisions must be based on a particular situation;
- d. Decisions must be able to be made and without violating other regulations according to the content and objectives in accordance with the regulations on which the decision is based.,

B. Formal Requirements

- a. The conditions specified in relation to the preparation for making the decision and in relation to the way in which the decision is made must be fulfilled;
- b. Decisions must be given form and determined;
- c. The conditions determined in connection with the implementation of the decision must be fulfilled

²² Moh. Mahfud MD.

²³ Gusti Ngurah Wairocana, 'Keabsahan Keputusan Tat Usaha Negara Dalam Majalah Ilmu Hukum Kertha Patrika' (Universitas Udayana, 2007).

²⁴ Wairocana.

- d. The time period determined between the cause of the decision being made and the announcement of the decision must not be exceeded.

In the provisions of Article 2 of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, which determines that: "Not included in the meaning of State Administrative Decisions according to this law:

- a. State Administrative Decisions which are civil legal acts;
- b. State Administrative Decrees which are general regulations;
- c. State Administrative Decisions that still require approval;
- d. State Administrative Decisions issued based on the provisions of the Criminal Code and Criminal Procedure Code or other statutory regulations of a criminal law nature;
- e. State Administrative Decisions issued on the basis of the results of an examination by a judicial body based on the provisions of applicable laws and regulations;
- f. State Administrative Decree regarding the administration of the Indonesian National Army;
- g. Decision of the General Election Commission both at the central and regional levels regarding the results of the general election.

Prajudi Atmosudirjo²⁵ stated that in formulating decisions, theoretically the Government is bound by three legal principles, namely²⁶:

- a. The principle of jurisdiction (*rechtmatigheid*), meaning that government or administrative decisions must not violate the law (*onrechtmatige overheidsdaad*);
- b. The principle of legality (*wetmatigheid*), meaning that decisions must be taken based on statutory provisions;
- c. The principle of discretion (*discretie, freies Ermesseti*), meaning that ruling officials may not refuse to make decisions on the grounds that "there are no regulations" and are therefore given the freedom to make decisions according to their own opinion as long as they do not violate the principles of jurisdiction and legality mentioned above. There are two kinds of discretion, namely "free discretion" when the law only determines the limits, and "*bound discretion*" when the law sets out several alternatives to choose from, the one that the administration officials consider to be the closest.

There are various formulations of the types of State Administrative Decisions/KTUN (*Beschikking*) according to doctrine (opinions/theories of State administration experts), including according to P. De Haan (Netherland), in his book: "*Bestuursrecht in de Sociale Rechtsstaat*", grouped as follows :

- a. KTUN for Individuals and Objects (*Persoonlijk en Zakelijk*);
 - 1) An individual KTUN is a decision issued to a person based on certain personal qualities, where the resulting rights cannot be transferred to another person. Example: Civil servant decree, driver's license, etc.
 - 2) Material KTUN is a decision issued based on the quality of the object or the status of an object as an object of rights, where the resulting rights can be transferred to another person. Examples: Land Rights Certificate, BPKP/STNK for motor vehicles, etc.
- b. Declarative and Constitutive KTUN (*Rechtsscstellend en Rechtsscheppend*);
 - 1) A declarative KTUN is a decision that states or confirms the existence of a legal relationship that actually already exists. Example: Birth Certificate, Death Certificate, etc.
 - 2) A constitutive KTUN is a decision that creates a new legal relationship that did not previously exist, or conversely terminates an existing legal relationship. Examples of Marriage Certificates, Divorce Certificates, etc
- c. Free and Bound KTUN (*Vrij en Gebonden*)

²⁵ Prajudi Atmosudirjo, *Hukum Administrasi Negara* (Jakarta: Ghalia Indonesia, 1981).

²⁶ Hadjon, Martosoewignyo, and Basah.

Free KTUN is a decision based on freedom of action (Freis Ermessen/Discretionary Power) and provides freedom for its implementers to exercise interpretation or discretion. Example of a Decree to Dismiss a Civil Servant based on disciplinary punishment which has been regulated clearly and in detail in the legislation.

- d. KTUN which gives burdens and which benefits (*Belastenden Begunstigend*);
 - 1) KTUN that imposes burdens is a decision that imposes obligations. Example: Decree on Taxes, Retributions, etc
 - 2) A profitable KTUN is a decision that provides benefits to the intended party. Example of an expired tax payment whitening decree.
- e. Instant and Permanent KTUN (*Einmaligh en Voortdurend*).
 - 1) Immediate KTUN is a decision whose validity period is only one time. Example of a permit for entertainment, music, sports performances, etc
 - 2) The harvester's KTUN is a decision that is valid forever, unless there are changes or new regulations. Example: Certificate of Ownership

Investigation Meanwhile, according to Law of the Republic of Indonesia no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning State Administrative Courts:

- a. Positive State Administrative Decisions (Article 1 number (3));

This is a written determination issued by a State Administrative Body/Official containing State Administrative legal actions which are based on applicable laws and regulations, are concrete, individual and final in nature which give rise to legal consequences for a person or Civil Legal Entity.
- b. Fictitious State Administrative Decisions (Article 3 point (1))

This is a State Administration decision which should have been issued by a State Administration Body/Official according to its obligations but apparently was not issued, thereby causing losses to a person or Civil Legal Entity. Example: In a civil service case, a superior is obliged to make a DP3 or propose a promotion to his subordinate, but his superior does not do so.
- c. Negative Fictitious State Administrative Decisions (Article 3 paragraph (2))

This is a State Administration decision requested by a person or legal entity Civil, but not responded to or not issued by the relevant State Administration Agency/Official. So it is considered that the State Administrative Body/Official has issued a rejection (negative) decision. For example, if an applicant for 1MB, KTP, Certificate, etc. is not answered/issued within the specified time period, then it is considered that they have clearly issued a State Administration decision that rejects it.
- d. In government administration practice, there are several KTUNs that have the potential to give rise to State Administration disputes, namely:
 - 1) Decision regarding licensing;

Juridically, a permit is an approval given by the government (TUN Agency/Official) to a person or civil legal entity to carry out certain activities.

According to Philipus M. Hadjon²⁷, the main purpose of licensing is to:

- a. Directing or controlling certain activities (for example: principle permits, 1MB, mining permits, forest exploitation permits, hunting permits, etc.);
- b. Prevent danger or disturbance (eg: disturbance/ Hinder Ordanatie, environmental impact assessment, etc.);
- c. Protecting certain objects (for example: entry permits for tourist attractions, cultural heritage, etc.); Distribution of rare objects or items (for example: route permits, rare animal trade permits, etc.);
- d. Selection of certain people or activities (eg: driver's license, firearms permit, research permit, etc.)

²⁷ Philipus M. Hadjon, 'Pelaksanaan Otonomi Daerah Berkaitan Dengan Perijinan Yang Rawan Gugatan', *Makalah Temu Ilmiah HUT PERATUN XIII*, 2004.

- 2) Decisions regarding legal status, rights and obligations;
 - a. Legal status of an individual or legal entity, for example birth certificate, death certificate, deed of establishment/dissolution of a legal entity, KTP, diploma, certificate (Exam Pass Certificate), etc.
 - b. Rights/obligations of individuals or legal entities regarding goods or services, for example granting/revoking rights to land, rights to carry out work, etc.
- 3) Decisions regarding staffing.
 - a. Decisions regarding civil servant transfers, where employees who are transferred object because they feel disadvantaged, hinder their career or because the transfer is considered a disguised disciplinary punishment;
 - b. The decision regarding civil servant disciplinary punishment, the employee concerned considers that the punishment is not in accordance with procedures or is unfair; about dismissal
 - c. Civil servant decisions, for example in the context of downsizing employees or liquidating an agency, etc
- 1) The quantity and capacity of investigators.

So far, there have been limitations in terms of the number and quality of investigators at institutions that have investigative duties, such as PSDKP and POLAIRUD. For a fairly wide area coverage in North Maluku, the placement of the number of investigators is very important to prepare files and demands for destructive fishing cases. In addition, PSDKP investigators often have difficulty identifying fish from destructive fishing that are already being sold on the market. This is of course related to the limited capacity of investigators in terms of identifying evidence, moreover in PPNS technical guidance there is no material on how to identify fish resulting from destructive fishing.

- 2) Availability of evidence.

The biggest obstacle to continuing destructive fishing cases to prosecution is the availability of evidence needed to prepare for legal offenses. The majority of laws in Indonesia, including the fisheries law, focus on material offenses, where a new case can be prosecuted through an article if there are already consequences that can be seen through evidence. Thus the availability of evidence becomes very important. For example, to prove cases of bombing and sedating fish, evidence of explosives, ships and/or fish catches is needed, however, in several cases that have occurred, people have burned boats and fish caught by the perpetrators of the bomb because of emotion or the public does not know that evidence is needed in the form of fish catches and explosives.

- 3) Absence of expert witnesses.

In the investigation process, the presence and information of expert witnesses is needed to strengthen evidence against destructive fishing incidents. So far, the obstacles faced by the parties working in the investigation process are limited funds to obtain expert witness testimony, plus the location of the expert witness being far from the incident. For example, to corroborate the evidence of a fish bombing case that occurred on a remote island in North Maluku, human resources and financial resources are needed to send fish samples to the POLDA forensic laboratory or to fishery experts or chemists at universities in North Maluku. If there is no testimony from the expert witness, then the case does not have strong evidence.

4. State Administrative Decisions That Harm Society

In this section we will examine the issue of adverse decisions and decisions. Juridically, this category of action, according to jurisprudence, falls within the meaning of "act" or "daad" from Article 1365 of the Civil Code. These unlawful acts committed by the government are regulated in Article 1365 of the Civil Code, which stipulates: "*Every unlawful act, which causes*

harm to another person, requires the person whose fault it was to cause the harm, to compensate for the loss."

Starting from Article 1365 of the Civil Code above, several elements can be stated that are necessary for an unlawful act to occur, namely:

- a. There is an act that violates the law;
- b. There is a loss;
- c. There is a causal relationship (causalitet) between the action and the loss;
- d. There is an error.

From Article 1365 of the Civil Code it can be considered as:

- a. Actions that can be unlawful according to the meaning of the article and therefore can be the cause of a claim for compensation on the basis of the article, or as
- b. Actions that are not unlawful according to the meaning of Article 1365 of the Civil Code can therefore only be a basis for claiming compensation if there is a special regulation (law) that provides the possibility of such a claim.

So in this sense, government actions/actions that are detrimental can be considered as unlawful actions by the authorities. From civil law jurisprudence, the authority (government) by "acting" or "not acting" can constitute "*daad*" according to the meaning of Article 1365 of the Civil Code. This is different from the opinion of Sadjijono, who stated that the act was a government action that was not based on a regulation. legislation that gives authority to act, is an unlawful act (*pnrechtmatige daad*).²⁸

In article 1365 Burgelijk Wetboek (Civil Code) there is a legal obligation for perpetrators of detrimental actions to compensate for losses.

"Every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss."

This provision regarding actions that cause harm is one of the benchmarks that the government's actions violate the law (*Onrechtmatige Overheidsdaad*). From this description, unlawful acts by authorities can be carried out through state administrative decisions (decrees) or state administrative decisions which constitute civil law. In relation to unlawful acts, this concept, as specified in Article 1365 of the Civil Code, shows that the legal nature of the government's liability for unlawful acts is civil liability.

From Article 1365 of the Civil Code which has been described on the previous page, which also examines several elements required for an unlawful act to occur, namely: The existence of an unlawful act; There is a loss; The existence of a causal relationship (*causalitet*) between actions and losses; There is an error.

From this exposure. Above, it can be understood that State Administrative Decisions that are detrimental to society are a category of government actions that violate the law or are against the law. So on that basis the action must be canceled through the State Administrative Court.:

5. State Administrative Court

Historically, the State Administrative Court (PTUN) in Indonesia during the Dutch East Indies was already known. This is outlined in Article 134 paragraph (1) I.S which contains:

- a. Civil disputes are decided by ordinary judges according to the Law;
- b. Examination and resolution of administrative cases falls under the authority of the administrative agency itself.

Then, after Indonesia became independent, namely during the 1950 UUDS, three ways of resolving administrative disputes were known, namely:

- a. Submitted to the Civil Court;
- b. Submitted to a specially established Agency;

²⁸ Sadjijono, *Memahami Beberapa Bab Pokok Hukum Administrasi* (Yogyakarta: LaksBang PRESSindo, 2009).

- c. By determining one or several TUN disputes whose resolution shall be submitted to the Civil Court or Special Agency.

Changes began to occur with the issuance of Law no. 14 of 1970 concerning Basic Provisions of Judicial Power. In Article 10 of the law, it is stated that judicial power is exercised by the court within the context of, among other things, the State Administrative Court. The authority of judges in resolving state administrative disputes is increasingly emphasized through Law no. 5 of 1986 concerning the State Administrative Court where it is stated that the authority to examine, decide and resolve an administrative case/dispute rests with the Judge/State Administrative Court, after administrative measures have been taken.

Juridically, currently the administrative court, which is also called the State Administrative Court (PTUN), is based on Law no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning PTUN. In considering the PTUN Law, it is stated that the existence of the PTUN is intended to uphold justice, truth, order and legal certainty, so that it can provide guidance to the community, especially in the relationship between the TUN Agency or Officials and the community. Apart from providing guidance or legal protection for the community, it was also emphasized that the existence of the PTUN is to develop, perfect and order the apparatus in the field of TUN, so that it can become an efficient, effective, clean and authoritative tool, and which in carrying out its duties is always based on the law. based on the spirit and attitude of service to the community. To find out more about administrative justice, it is necessary to prioritize the elements of administrative justice.

According to Rochmat Soemitro, these elements are²⁹:

- a. The existence of an abstract legal rule that is binding on the general public and is a general regulation that includes public law (HTN and HAN).
- b. There is a real (concrete) legal dispute
- c. There are at least two parties and at least one party is the administration.
- d. The existence of a judicial apparatus that has the authority to decide disputes,

This opinion was developed by Sjachran Basah,³⁰ so that the elements of pure administrative justice are as follows;

- a. There is law, especially in the State administrative law environment, which can be applied to a problem
- b. There is a concrete legal dispute, which is basically caused by a written decision of the State administration,
- c. At least two parties, and at least one of the parties is the State administration
- d. The existence of an independent and separate judicial body which has the authority to decide disputes neutrally or impartially,
- e. The existence of formal law in order to apply the law, finding the law in concrete "to maintain compliance with material law

TUN dispute resolution, both according to Law no. 5 of 1986 and Law no. 9 of 2004 concerning PTUN is within the framework of the Indonesian Rule of Law. The legal state in question is a legal state based on Pancasila and the 1945 Constitution, as this is stated explicitly in the 2004 PTUN Law by stating that the PTUN is a judicial environment under the Supreme Court as an independent judicial authority, to hold trials to uphold law and justice, based on Pancasila and the 1945 Constitution.

Theoretically, the existence of PTUN cannot be separated from the concept "Indonesia is a state of law". Therefore, every action of state officials must be based on law. Because one of the elements in the "*Rechtsstaaf*" concept as presented by FJ Stahl prioritizes the existence of administrative justice.

²⁹ Rochmat Soemitro, *Peradiian Tata Usaha Negara* (Bandung: Erasco, 1997).

³⁰ Sjachran Basah, *Eksistensi Dan Tolak Ukur Badan Peradiian Administrasi Di Indonesia* (Bandung: Alumni, 1989).

The principle of equality before the law contains equality between the people and the government (administrative officials), which is reflected in the judiciary, so that the people and the government are both subject to and obedient to the law and have the same position before the law. The principle of equality before the law requires that there is no discrimination when the law is applied and all parties are on an equal footing³¹.

The similarities include that both (*both rechtsstaat and rule of law*) recognize the protection of human rights, the existence of "legal sovereignty" or "rule of law", and the principle of separation and limitation of state power to prevent the emergence of arbitrary actions by the authorities which can violate human rights. age. Because Indonesia's legal system is directed towards Continental Europe, the Indonesian State, in terms of realizing a legal state, wants to establish a state administrative court (PTUN) as adopted by continental European countries.

The existence of state administrative courts (PTUN) in various modern countries, especially countries that adhere to the ideology of the Welfare State, is a source of hope for the community or citizens to defend their rights which are harmed by public legal actions of state administration officials due to decisions or policies made. he took it out. Seeing this reality, it can be understood that the existence of the PTUN is necessary, as a route for justice seekers who feel that their interests have been harmed because in exercising their powers it turns out that the relevant state administration agency or official has been proven to have violated legal provisions.

The purpose of establishing and positioning a PTUN in a country is related to the state philosophy it adheres to. The Unitary State of the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution, therefore the rights and interests of individuals are upheld as well as the rights of the community. Individual interests are balanced with the interests of society or the general interest. As stated by S.F Marbun, the aim of establishing PTUN is to provide protection for all citizens who feel their rights have been harmed - even if this is done by the state's own instruments. Apart from that, to maintain a balance between public interests and individual interests so that they work in harmony and a sense of justice in society is maintained and can be improved, which is also a state public service to its citizens.

Apart from that, according to Prajudi Atmosudirdjo,³² the aim of establishing the state administrative court (PTUN) is to protect citizens whose legal interests are often oppressed or squeezed by the increasingly widespread interference of the authorities into people's lives. Through the PTUN, the public can sue the authorities and get corrective action from the PTUN.

Meanwhile, Sjachran Basah³³ clearly stated that the aim of the state administrative court (PTUN) is to provide legal protection, not only for the people but also for state administration in the sense of maintaining and maintaining a balance between the interests of society and the interests of individuals. For state administration, order, peace and security will be maintained in carrying out their duties in order to create a strong, clean and authoritative government in a legal state based on Pancasila. Thus, the PTUN is one of the judicial bodies that exercises judicial power, is an independent power that is under the Supreme Court in order to administer justice to uphold law and justice. Law enforcement and justice are part of legal protection for the people against public legal actions by state administration officials that violate the law.

Normatively, the State Administrative Court has the authority to resolve State Administrative disputes. Article 1 number 4 of the Law on PTUN determines:

State administration disputes are disputes that arise in the field of state administration between individuals or civil legal entities and state administration bodies or officials both at the central and regional levels, as a result of the issuance of state administration decisions, including employment disputes based on applicable laws and regulations. ". It can be concluded

³¹ Sadjijono.

³² Atmosudirdjo.

³³ Basah.

that the background to the emergence of the TUN dispute was due to problematic state administrative decisions (KTUN).

Article 1 point 3 of the PTUN Law states that what is meant by KTUN is "*a written determination issued by a state administrative body or official containing concrete, individual and final applicable state administrative legal actions that give rise to legal consequences for a person or legal entity. civil*".

Written determinations primarily refer to the content and not to the form of decisions issued by TUN bodies or officials. TUN bodies or officials are bodies or officials at the center and in the regions that carry out executive activities. A TUN legal action is a legal action by a TUN Agency or Official that originates from a provision of the State Administrative Law which can give rise to rights or obligations for other people. Concrete means that the object decided in the KTUN is not abstract, but tangible, certain or can be determined. It is individual in nature, meaning that the KTUN is not intended for the general public, but has a specific address and target. Being final means it is definitive and therefore can give rise to legal consequences.

Judging from the explanation above, the KTUN that can be used as an object of dispute in the PTUN is very broad. However, if you look at the restrictions imposed by the 2004 PTUN Law in conjunction with the 1986 PTUN Law, the KTUN that can be used as the object of a TUN dispute is limited.

Excluded or not included in the definition of KTUN if:

- c. State Administrative Decisions which are civil legal acts;
- d. State Administrative Decrees which are general regulations;
- e. State Administrative Decisions that still require approval;
- f. State Administrative Decisions issued based on the provisions of the Criminal Code or Criminal Procedure Code or other statutory regulations of a criminal law nature;
- g. State Administrative Decisions issued on the basis of audit results
- h. judicial bodies based on the provisions of applicable laws and regulations;
- i. State Administrative Decree regarding the administration of the Indonesian National Army;
- j. The decision of the General Election Commission, both central and regional, regarding the results general elections.

6. Settlement of State Administrative Decisions That Cause Adverse Effects

As a consequence of the rule of law, the existence of the law as commander in chief requires that there is equality before the law. This means that either the government or individuals/legal entities that carry out actions that cause losses can be legally sued in court. As explained on the previous page, if the government issues a detrimental State administrative decision, the competence of the court to handle it is the State Administrative Court.

Acts that violate the law committed by those in power must remain legally accountable, so that the principle of equality before the law is fulfilled as a form of actualization of human rights protection for society. Therefore, even though the government is the ruler, it does not mean that it is free from legal responsibility due to actions that cause losses due to the decisions it issues.

Settlement of disputes over State administrative decisions that are in the nature of decrees (*beschikking*) is carried out in the State administrative court. Meanwhile, state administration decisions that are not in the nature of decrees (*beschikking*) are accountable to the general court. In Law of the Republic of Indonesia no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning State Administrative Courts, in Article 2, namely:

- a. State Administrative Decisions which are civil legal acts;
- b. State Administrative Decrees which are general regulations;
- c. State Administrative Decisions that still require approval;

- d. State Administrative Decisions issued based on the provisions of the Criminal Code and Criminal Procedure Code or other statutory regulations of a criminal law nature;
- e. State Administrative Decisions issued on the basis of the results of an examination by a judicial body based on the provisions of applicable laws and regulations;
- f. State Administrative Decree regarding the administration of the Indonesian National Army;
- g. Decision of the General Election Commission, both at the center and at the regional level, regarding the results of the general election.

According to Philippus M. Hadjon et al³⁴, the characteristic of state administrative court procedural law lies in the legal principles that underlie it, namely:

- a. The principle of *rechmatig* presumption (*vermoeden van rechtmatigheid = praesumptio iitstae causa*). This principle means that every action of the ruler must always be considered *rechmatig* until it is annulled. With this principle, a lawsuit does not delay the implementation of the KTUN being sued (Article 67 paragraph (1) UUNO. 5 of 1986);
- b. The principle of independent evidence. The judge determines the burden of proof. This is different from the provisions of article 1865 bw. This principle is adhered to in article 107 uuno. 5 of 1986, however, it is still limited by the provisions of article 100;
- c. The principle of the judge's activeness (*dominus litis*). The judge's activity is intended to balance the positions of the parties because the defendant is a TUN official while the plaintiff is a person or civil legal entity. The application of this principle, among others, is contained in the provisions of Article 58, Article 63 paragraphs (1 and 2), Article 80 and Article 85;
- d. The principle of court decisions has binding force "*erga omnes*". TUN disputes are public law disputes. Thus, the TUN court's decision applies to anyone - not just the parties to the dispute. In this context, it seems that the provisions of Article 83 regarding intervention are contrary to the principle of "*erga omnes*".

Juridically, the grace period for PTUN lawsuit procedures is only 90 days from the time the KTUN is received or announced, this is as stated in Article 55 of Law no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning PTUN. Furthermore, after the lawsuit process, there is a Dismissal Process (Deliberative Meeting) by the Chair of the PTUN to check whether the lawsuit meets the criteria specified in Article 62 of the PTUN Law, so that the lawsuit must be declared inadmissible or declared baseless.

Judging from several characteristics of PTUN above, it can be seen that there is an effort to create balance in the PTUN process between TUN officials and community members whose status and position are factually different, where TUN officials have the authority of government power while community members are the parties who are governed and must submit to what is ordered by the Government (TUN officials). Therefore, it is hoped that the characteristics of the PTUN will provide a guarantee of legal protection for the public or civil legal entities who feel their rights have been harmed as a result of the issuance of a KTUN by a State Administrative Court official.

A lawsuit at the PTUN is filed by a person or civil legal entity who feels that their interests have been harmed as a result of the issuance of a KTUN. Therefore, the element of interest in filing a lawsuit is very urgent in a dispute at the Administrative Court. As stated in the 1986 PTUN Law in conjunction with Law no. 9 of 2004 concerning PTUN, this is confirmed in Article 53 paragraph (1), as follows "Person or civil legal entity Feeling that their interests have been harmed by a State Administrative Decree, they can submit a written lawsuit to the competent court containing a demand that the disputed State Administrative Decree be declared null or invalid, with or without a claim for compensation and/or rehabilitation.

The provisions of Article 53 paragraph (1) are the basis for who acts as the Plaintiff Subject in the PTUN, namely a Person or Civil Legal Entity who feels that their interests have

³⁴ Hadjon, Martosoewignyo, and Basah.

been harmed by a TUN Decision. Furthermore, Article 53 paragraph (2) of the PTUN Law states that the reasons that can be used in a lawsuit are:

- a. The State Administrative Decision being sued is in conflict with the applicable laws and regulations;
- b. The State Administrative Decision being sued is contrary to the general principles of good governance.

A lawsuit that will be submitted to the State Administrative Court must contain matters which constitute the formal requirements for a lawsuit as stated in Article 56, namely:

- a. name, nationality, place of residence and occupation of the plaintiff or his proxy.
- b. name of position, and place of residence of the defendant.
- c. the basis of the claim and the matter requested to be decided by the court.

According to Article 54 paragraph (1), a lawsuit for a TUN dispute is submitted in writing to the competent court whose jurisdiction includes the Defendant's residence. The lawsuit submitted must be in written form, because the lawsuit will be a guide for the court and the parties during the examination. If the Defendant is more than one State Administrative Agency or Official and is not domiciled in the same jurisdiction of the State Administrative Court, the lawsuit is filed in the court whose jurisdiction includes the domicile of one of the State Administrative Agencies or Officials.

One of the specialties of the State Administrative Court is also related to the function of the State Administrative High Court (PTTUN), which is not only an appellate level court, but also has a function as a first level court like the State Administrative Court (PTUN). This happens if the TUN dispute is related to the provisions of Article 48 of Law no. 5 of 1986 in conjunction with Law no. 9 of 2004, which regulates administrative appeals.

In an examination at the State Administrative Court, the mechanism starts from the Preliminary Examination, which consists of:

- a. Deliberation meeting/Dismissal Process (Article 62).
- b. Preparatory Examination (Article 63).

The Deliberative Meeting is also called the Dismissal Process or screening stage which is the authority of the Chief Justice, regulated in Article 62 of Law no. 5 of 1986 in conjunction with Law no. 9 of 2004 concerning PTUN. In this dismissal process, the Chief Justice, after going through an administrative examination at the clerk's office, examines the incoming lawsuit. Regarding whether the lawsuit has fulfilled the requirements as regulated in the Regulations Law and whether it is within the authority of the State Administrative Court to try it.

In the dismissal process, the Chairman of the Court has the authority to decide with a decision accompanied by considerations that the lawsuit submitted is not accepted or is groundless, if:

- a. The subject matter of the lawsuit, namely the facts that are used as the basis of the lawsuit, clearly do not fall within the authority of the Court;
- b. The requirements for the lawsuit as intended in Article 56 are not fulfilled by the plaintiff even though he has been warned;
- c. the lawsuit is not based on proper reasons;
- d. What is demanded in the lawsuit has actually been fulfilled by the State Administrative Decree being sued;
- e. The lawsuit is filed prematurely or has expired. The decision of the Chairman of the State Administrative Court regarding this matter is made in a deliberative meeting before the trial day is determined, by summoning both parties. An opposition to this decision can be submitted to the relevant State Administrative Court within a period of 14 (fourteen) days after it is pronounced. The opposition must fulfill the requirements of an ordinary lawsuit as regulated in Article 56. The opposition is examined by the State Administrative Court with a short procedure, conducted by a Panel of Judges. If the objection is accepted or

confirmed by the Court concerned through a short procedure, then the Determination of the Chairman of the State Administrative Court taken at the deliberation meeting is declared null and void and the subject matter of the lawsuit will be examined, decided and resolved according to the normal procedure. Legal remedies such as appeal and cassation cannot be used against court decisions regarding resistance, because these decisions are considered to be decisions of the first and final level, so they have permanent legal force.

Meanwhile, it is related to the Preparatory Examination. This examination was held considering that the Plaintiff's position in the PTUN is generally assumed to be a member of the community.

He has a weak position compared to the Defendant as a State Administrative Official who holds executive power. In this weak position, it is very difficult for the Plaintiff to obtain the information and data needed for the purposes of filing a lawsuit from the State Administrative Agency or Official being sued.

The Preparatory Examination is carried out in a closed room, not in a courtroom which is open to the public. In the Preparatory Examination the Judge is obliged and authorized to:

- a Provide advice or directions or directives to the Plaintiff to improve his claim and complete the required documents or data within a 30 day grace period.
- b Request an explanation from the Defendant regarding everything that will make it easier to examine the dispute at trial

If the 30 day period specified for correcting the claim is not fulfilled by the Plaintiff, the Panel of Judges will issue a decision stating that the Plaintiff's claim is declared inadmissible, and based on this decision there is no legal remedy, but a new lawsuit can still be filed.

After the Preliminary Inspection, the next mechanism is the First Level Inspection. Examinations at the first level are generally carried out at the State Administrative Court (PTUN), except for disputes which, according to the relevant laws and regulations, must be resolved first through administrative efforts as intended in Article 48 of the PTUN Law, then the examination is carried out at the State Administrative Court (PTUN). The first level is carried out by the State Administrative High Court (PTTUN). This first level inspection can be carried out in 2 (two) ways:

- a. Inspection as usual.
- b. Quick inspection.

In the process of examining a TUN dispute, it is also possible for a third party, namely a person or civil legal entity, to participate or be included in the process of examining an ongoing dispute (Article 83).

In the event that the examination of the dispute has been completed, starting from answering answers, submitting letters of evidence and listening to statements from witnesses, then the parties are then given the opportunity to convey conclusions which are the final opinions of the parties to the dispute (Article 97 paragraph 1). After the conclusions were delivered, the judge adjourned the trial to deliberate to make a decision. The court decision to be taken by the judge may be in the form of (Article 97 paragraph (7)):

- a. Lawsuit dismissed;
- b. The lawsuit was granted;
- c. Lawsuits are not accepted;
- d. Lawsuit dropped.

If the lawsuit is granted, the court will determine the obligations that must be carried out by the TUN Agency or Official as the Defendant. namely in the form of (Article 97 paragraph (9)):

- a. Revocation of the relevant TUN Decision.
- b. Revocation of the relevant TUN Decree and issuance of an assisting TUN Decree.
- c. The issuance of a TUN decision in the case of a lawsuit is based on Article 3.

Apart from these obligations, the court can also impose an obligation on the Defendant to pay compensation and provide rehabilitation in cases involving employment disputes.

Apart from the government's accountability according to public law, the government's accountability is also through the general judiciary. Basically, the government's accountability through general courts is related to claims for compensation. The reason for the lawsuit to sue the government with demands for compensation is "unlawful acts" or "default" by the authorities.

The nature of disputes regarding State Administrative Decisions which merge or civil decisions have two characteristics between administrative law and civil law. As previously explained, however, the civil law relationship with the authorities or the government is always influenced by their duties according to public law and therefore this legal relationship in many cases has a public law tone. Public law is basically the main means for the government to carry out government tasks, development, efforts to eliminate or prevent things that are detrimental to society.

Civil agreements between the government and private parties make it very possible that if there is a breach of contract regarding the contents of the agreement, the legal instrument for resolving problems between the government and the private sector is to use civil legal instruments.

The government's freedom of action in carrying out its duties also has a special position compared to ordinary people. Therefore, the issue of suing the government before a judge cannot be equated with suing ordinary people. The issue of suing the government is considered a difficult part of civil law and administrative law³⁵.

Thus, it can be concluded that the characteristics of government cooperation disputes with private parties are in the realm of civil law and the realm of public law. Because when the government carries out regulations In an agreement with a private party, principles based on civil law apply, including freedom of contract, the principle of consensualism, *pacta sunt servanda*, etc. Apart from that, if it is related to decisions from State administrative officials regarding the implementation of agreements that are declared to be merged into civil decisions as referred to as civil decisions by Yohanes Usfunan³⁶, then this matter is in the realm of civil law.

Out-of-court dispute resolution is a resolution effort that focuses more on deliberation to reach consensus. The methods chosen are in accordance with the agreement of the parties. Government tasks or affairs cannot be carried out by the government alone, in collaboration with other government organs or by involving private parties in the form of permits, cooperation or agreements.

Supervision is an element of the government management system, which is very important to encourage the realization of public accountability for the government. Public accountability is a necessary condition to encourage the realization of a clean and authoritative government. The government as a manifestation of people's sovereignty must carry out the duties it carries out in order to run the wheels of government. However, government officials often make mistakes in their implementation, which has the potential to cause harm to other people.

According to Muchsan, supervision includes planning, implementation and results of a government program. Where the objects of supervision here include government officials, the legal products produced, and the facilities used by the government in carrying out its functions.

CONCLUSION

Acts that violate the law committed by those in power must remain legally accountable, so that the principle of equality before the law is fulfilled as a form of actualization of human

³⁵ Sudargo Gautama, *Pengertian Tentang Negara Hukum* (Bandung: Alumni, 1983).

³⁶ Usfunan.

rights protection for society. Therefore, even though the government is the ruler, it does not mean that it is free from legal responsibility due to actions that cause losses due to the decisions it issues. Settlement of disputes over State administrative decisions that are in the nature of decrees (*beschikking*) is carried out in the State administrative court. Meanwhile, state administration decisions that are not in the nature of decrees (*beschikking*) are accountable to the general court.

So that every person or community who is harmed by State administrative decisions made by the government can file a lawsuit with the general court or State administrative court. This is done in order to prevent arbitrary actions by State administration officials or misuse of authority, as well as to protect the human rights of every person/community who is harmed as a result of a State administration decision.

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